

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 488 of 1999

with

CIVIL APPLICATION NO. 746 OF 1999

with

CIVIL APPLICATION NO. 599 OF 1999

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

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DOLATBHAI PARBHUBHAI PATEL

Versus

STATE OF GUJARAT

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Appearance:

MR BP DALAL for Petitioner (absent)

MR. PREMAL JOSHI, AGP, for Respondent No. 1

MR JB PARDIWALA for Respondent No. 4

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CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 15/09/1999

ORAL JUDGEMENT

These three matters can be conveniently decided  
by a common order finally at the admission stage. List  
has been revised three times. None appears for the

petitioner/applicant in the above matters.

Shri Premal Joshi for respondent Nos. 1 and 2 and Mr. J.B. Pardiwala for respondent Nos. 3 and 4 have been heard. Affidavit and counter affidavit etc. have been perused.

In Special Civil Application No. 488 of 1999 notice was directed to be issued on 22.1.1989. It has not been admitted so far nor any interim order was passed in this Special Civil Application. The prayer of the petitioner in this Special Civil Application is for quashing the order of the Collector, respondent No. 2 passed on 29.12.1997 as well as the order of the Additional Chief Secretary (Appeals) passed on 3.11.1998 with further prayer to issue writ of mandamus directing the respondent to grant necessary permission to carry fishing activity in the disputed pond for the remaining period of seven years.

The brief facts are that by Resolution dated 13.4.1994 passed by the Gram Panchayat, Jalalpore, the disputed pond was given on lease to the petitioner for a period of ten years for carrying on fishing activity. In the said Resolution the important conditions were that the petitioner was to use the pond for initial period of three years and therefore he was required to obtain permission of the Collector, respondent No. 2 to carry on further fishing activity in the said pond. Written agreement was executed on 11.5.1994. The petitioner used the pond for undisturbed period of three years. This period of three years was to expire on 12.4.1997 and therefore prior to this the petitioner moved an application to the Collector on 11.7.1996 for granting further permission for a period of seven years. The said application was rejected on the ground that the pond was required in public interest for the villagers in general and therefore further permission was not granted. This order of the Collector has been challenged on the ground that opportunity of hearing was not afforded to the petitioner. An application for review of the Collector's order was moved by the petitioner on 2.1.1998 which was also rejected. Thereafter, an appeal was filed before the Additional Chief Secretary (Appeals) which too was dismissed. Thereafter, this writ petition has been filed.

No counter affidavit has been filed by the respondents in this writ petition. Thereafter, Civil Application No. 599 of 1999 was moved by the petitioner. Notice was issued in this Civil Application and interim

order was granted that until further orders the respondents are restrained from dispossessing the petitioner from the pond bearing Survey No. 614 in Jalalpore. This order was passed on 5.2.1999. Counter affidavit was filed in this Civil Application.

Thereafter Civil Application No. 746 of 1999 was moved by the petitioner for a direction for taking appropriate action against the respondent for flouting and committing breach of the interim order dated 5.2.1999. Counter affidavit has been filed in this Civil Application by the respondent No. 4.

Having heard the learned counsel for the respondents and having perused the material on record in the Special Civil Application No. 488 of 1999, it can safely be said that this Special Civil Application does not require admission for final hearing. The grievance of the petitioner is totally unfounded and the material facts were concealed as it emerges from the two counter affidavits of the respondent Nos. 3 and 4.

It was not a case where the lease was granted for a period of ten years unconditionally and the terms of the lease were flouted by the respondents. Even if it would have been so the petitioner could have approached the Civil Court for claim of damages for committing breach of contract, namely, lease entered into between the parties. The very Resolution of the gram panchayat shows that the lease was granted to the petitioner for a period of ten years to carry on fishing activity in the pond. The first condition was that he will carry on this activity for a period of three years and if he was to continue this activity beyond three years he was required to obtain permission of the Collector. Secondly, it was not unconditional lease. The petitioner himself admits that he continued fishing activity for a period of three years without any interference from the respondents. Feeling that the period of three years was to expire, he moved an application for extension before the Collector. The Collector did not act in any arbitrary manner nor had he any grudge with the petitioner. On the other hand, considering the public interest and general interest of the villagers, he thought that the pond was to be preserved by erecting boundary walls for storage of water for villagers. Keeping in view the public interest, the Collector refused to grant further permission to individual petitioner for carrying out fishing activity in the pond. This order therefore can neither be said to be arbitrary nor malafide nor it can be said to be violative of the principles of natural justice. As such

this order hardly requires quashing.

The order of the appellate authority in revision also cannot be said to be violative of any provisions of law or any terms and conditions in the lease deed.

It may be noted that the writ petition was filed on 21.1.1999. It has been deposed in the counter affidavit that the possession of the pond was also taken on 28.1.1999. This fact was not brought to the notice of the court while moving Civil Application No. 599 of 1999. By suppression of this material fact interim order was obtained on 5.2.1999 restraining the respondents from dispossessing the petitioner whereas as a matter of fact the petitioner was already dispossessed of the pond on 28.1.1999. The contention that the said possession was taken over behind the back of the petitioner also cannot be sustained because in pursuance of the Collector's order and in the presence of the petitioner possession was taken over. It was thus not a symbolic recovery of possession but actual recovery of possession witnessed by witnesses and preparation of recovery memo.

Two contrary stands were taken by the petitioner. One was that he was never dispossessed and the other that he was dispossessed of the pond illegally and on the basis of these contradictory stands he applied through another Civil Application No. 746 of 1999 for taking action against the respondent for committing breach of the interim order dated 5.2.1999. A person who himself is not sure whether he was dispossessed or was in possession and who came to the court by suppressing material fact cannot complain that the order so obtained by material concealment of facts has been violated by the respondents. Therefore, there is no occasion for taking any action for alleged violation of the interim order inasmuch as there was actually no violation of the interim order which was obtained by suppression of material facts.

For the reasons stated above, this Special Civil Application and the two Civil Applications under consideration are dismissed with no order as to costs.

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